

The Examiner asserts that the “instant claims differ from the reference [‘295] by reciting dyeing ingredients such as anionic associate polymer, which is crosslinked with ally ether” and proposes to remedy this deficiency “by modify[ing] the primary reference [‘295] by using anionic associative polymer, which is crosslinked with allyl ether” as allegedly taught by ‘195.” See page 3 of the present Office Action. The Examiner asserts that the proposed “modification would have been obvious because one would expect that the use of such polymer as taught by ‘195 would be similarly useful and applicable to the analogous composition taught by ‘295.” *Id.* at pages 3-4. Applicants disagree.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143. In the present case, the Examiner has failed to establish a *prima facie* case as neither of the above criteria has been met.

With respect to the first criteria, conclusory statements are not sufficient to support a *prima facie* case of obviousness. One “cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.” *In re Lee*, 61 U.S.P.Q.2d (BNA) 1430 (Fed. Cir. January 18, 2002). The Examiner’s statement of

obviousness is conclusory and does not provide the requisite suggestion or motivation to modify the reference. Accordingly, for at least this reason, the Examiner has failed to make a *prima facie* case.

Further, even if, *arguendo*, the proposed modification was made, the modified reference would not teach or suggest all the claim limitations. The claimed compositions comprise:

- (1) at least one anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from a fatty alcohol and a carboxylic acid;
- (2) at least one additional anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from an alkoxyated fatty alcohol and a carboxylic acid; and
- (3) at least one oxidizing agent.

Neither '295 or '195, individually or in combination, teach or suggest all of limitations of the present claims. For example, '295 discloses anionic amphiphilic polymers containing at least one hydrophilic unit of unsaturated olefinic carboxylic acid type, and at least one hydrophobic unit which is a (C₁₀ -C₃₀) **alkyl ester** of unsaturated carboxylic acid type, preferably exclusively of said (C₁₀ -C₃₀)alkyl ester of unsaturated carboxylic acid type. See Abstract. Further for example, '195 discloses anionic amphiphilic polymers containing at least one hydrophilic unit, and at least one **allyl ether** unit containing a fatty chain. Accordingly, neither reference

teaches or suggests at least one additional anionic associative polymer comprising at least one carboxylic acid group and at least one **ester derived from an alkoxylated fatty alcohol and a carboxylic acid**. Accordingly, for at least this additional reason, the Examiner has failed to make a *prima facie* case.

For at least the foregoing reasons, Applicants respectfully request withdrawal of this rejection.

III. Conclusion

Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extension of time under 37 C.F.R. § 1.136 required to enter this response and charge those additional fees to our Deposit Account No. 06-916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: Malia V. Darnem, Reg. No. 39,064
for Anthony C. Tridico
Anthony C. Tridico
Reg. No. 45,958

DATE: April 24, 2002

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

299942